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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-948

GILL TRAILER & EQUIPMENT RENTALS, INC.

Petitioner

versus

S. D'ANTONI, INC., AND/OR S. D'ANTONI MOTOR FREIGHT LINES

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATEMENT OF FACTS	3
REASONS FOR GRANTING THE WRIT	4
CONCLUSION	10
CERTIFICATE	13
APPENDIX A (Opinion of Fourth Circuit Court of Appeals)	14
APPENDIX B (Opinion of Supreme Court of Louisiana)	21
APPENDIX C (Minute Entry, Civil Action, *S. D'Antoni, Inc. vs. The Greater Atlantic & Pacific Tea Company, Inc.*)	27
APPENDIX D (Opinion of the 24th Judicial District Court)	30

STATUTORY AND CODAL CITATIONS

	Page
26 USCA 6321-23	2, 4
28 USCA 1257 (3)	2
Louisiana Civil Code Articles 2834, 2836, 2845	10

CASE CITATIONS

	Page
Gill Trailer & Equipment Rentals, Inc. vs. S. D'Antoni, Inc., and/or S. D'Antoni Motor Freight Lines, 267 So. 2d. 242 (1972); and 282 So. 2d. 714 (1973, La. Sup. Ct.)	1
S. D'Antoni, Inc. vs. The Greater Atlantic & Pacific Tea Company, Civil Action No. 68-1916, United States District Court, Eastern District of Louisiana, January 23, 1973	6
In the Matter of J. E. Hall Contractors, Inc., Bankrupt, 1973 P.H. Fed. 35, 798, 31 A.F.T.R. 2d 73-1033 (1973)	6
United States of America vs. Jane B Corporation, 167 F. Supp. 352 (1958)	8
Goldstein vs. Bankers Commercial Corporation, 152 F. Supp. 856, affirmed in 257 F. 2d. 48 (1958)	8

MISCELLANEOUS

S. Rep. No. 1708, 89th Congress, 2d. Sess., pp. 10-11 (1966 - 2 Cum. Bull 876, 883-884)	5, 8

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Petitioner

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

The petitioner, Gill Trailer & Equipment Rentals, Inc., prays that a writ of certiorari issue to review the opinion and judgment of the Supreme Court of Louisiana rendered in these proceedings on August 20, 1973, rehearing denied September 24, 1973.

OPINIONS BELOW

The opinion of the Court of Appeal is reported in 267 So.2d 242, (1972). The opinion of the Supreme Court

of Louisiana is reported in 282 So.2d 714 (1973, La. Sup. Ct.). The decision of the Supreme Court of Louisiana overrules the judgment of the Fourth Circuit Court of Appeal, State of Louisiana with both appellate courts rendering opinions. The Court of Appeal decision appears herein as Appendix A, infra, pp. 14 and the opinion of the Supreme Court of Louisiana appears herein as Appendix B, infra, pp. 21.

JURISDICTION

The judgment of the Supreme Court of the State of Louisiana was entered on August 20, 1973 and became final on September 24, 1973. (See Appendix B, infra, pp. 21). The petition for certiorari was filed less than ninety days from the date of aforesaid. The jurisdiction of this Court is invoked under 28 USCA 1257 (3).

QUESTIONS PRESENTED

Gill Trailer & Equipment Rentals, Inc. sued S. D'Antoni, Inc. and obtained a money judgment. Gill Trailer & Equipment Rentals, Inc. then seized a trucking permit which was the property of S. D'Antoni, Inc. and caused the permit to be sold at judicial auction. After the permit was sold a dispute evolved between Gill Trailer & Equipment Rentals, Inc., who was in the position of a seizing judgment creditor against S. D'Antoni, Inc., and the United States Government, who was in the position of a tax lien creditor against S. D'Antoni, Inc. over who had the superior lien, privilege, or claim to the proceeds of the sale. The question thereby arising requires an interpretation of the following:

1. The interpretation of USCA 26:6321-23 but particularly the interpretation to be given the 1966 amend-

ment to Section 6323 (f) (2) (B) which reads in part as follows:

> "(2) Situs of property subject to lien. - For purposes of paragraph (1), property shall be deemed to be situated -
>
> "(B) Personal property. - In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed."
>
> "For purposes of paragraph (2) (B), the residence of a corporation or partnership shall be deemed to be the place at which the **principal executive office** of the business is located." (emphasis supplied)

Narrowing the matter down even further, the question presented is what constitutes ". . . the principal executive office of the business . . ." of a corporation or partnership as mentioned in the act since this is the new phrase adopted by Congress in the 1966 amendment

STATEMENT OF FACTS

The facts are simple, brief and undisputed. The United States filed and recorded a tax lien or notice in the Parish of Jefferson, State of Louisiana asserting a lien against any assets that S. D'Antoni, Inc. might possess apparently in the belief that Jefferson Parish was the place where S. D'Antoni, Inc. had its principal executive office. It is also clear that the United States failed to timely file or record a tax lien or notice in the Parish of Orleans, State of Louisiana. The lien or notice filed in the Parish of Jefferson preceded the date Gill Trailer and Equipment Rentals, Inc. exercised their privilege as

a seizing creditor by asserting a writ of fieri facias and seizing the trucking permit.

There is also no doubt but that the official and only domicile and/or registered office of S. D'Antoni, Inc. and the only **report** to the State of Louisiana designating its domicile and/or registered office was in the Parish of Orleans. The articles of incorporation of S. D'Antoni, Inc., on file in the Secretary of State's office, recite that, "The location and post office address of its registered office is 6304 Beauregard, New Orleans, Louisiana." This registered office never changed through amendment or otherwise. The importance surrounding the fact that no change in this sole designation of address will be hereinafter shown.

If the United States Government filed their lien in the right Parish, then they are entitled to the proceeds of the sale. If they did not, then your petitioner is entitled to the proceeds.

There are no other facts to the knowledge of this writer which are relevant to the determination of who had the superior right to the proceeds of the judicial sale of the S. D'Antoni, Inc. permit.

REASONS FOR GRANTING THE WRIT

The 1966 amendment to USCA 26:6323 has created nothing but confusion and conflict whenever any Court has been required to deal with the new language. Oddly enough the whole purpose of the amendment was to clear up prior statutory language which Congress felt was confusing. Essentially, Congress substituted the language

"principal executive office" for the word "domicile". The stated reason for this exchange of language cannot be overemphasized. That reason is recited below:

> "The amendment requires notice of a tax lien to be filed where a taxpayer resides, and not at his domicile, as presently contended by the Internal Revenue Service, because of the **difficulty in determining a person's domicile, based as it is on (among other things) his state of mind.** On the other hand, for purposes of determining the residence of corporations and partnerships, the amendment **provides specific rules for determining their residence.** Under the amendment, the residence of a corporation or a partnership is deemed to be the place at which its principal executive office is located. This is the **most readily identifiable of all the offices that a business may maintain, appearing, as it does, on the annual reports filed with most States and on similar returns,** and avoids the uncertainty of determining which of the many business offices that a taxpayer may maintain is its principal one." (Emphasis supplied)
>
> "S. Rep. No. 1708, 89th Cong., 2d Sess., pp. 10-11 (1966 - 2 Cum. Bull 876, 883-884)"

Evidence of the unintended, but nonetheless existent, conflict and confusion brought on by the amendment is manifested by the very case which is the subject of this petition for writ of certiorari. The issue was originally decided favorably to the Government by the District Court, but that decision was reversed by the Fourth Circuit Court of Appeal of Louisiana and then the Fourth Circuit Court of Appeal was reversed by the Supreme Court of the State of Louisiana.

In the meantime, in the case entitled *S. D'Antoni, Inc. vs. The Greater Atlantic and Pacific Tea Company*, Civil Action No. 68-1916, United States District Court, Eastern District of Louisiana, January 23, 1973, the United States District Court followed the reasoning of the later reversed Louisiana Fourth Circuit Court of Appeal decision and on identical facts, ruled against the government and in favor of the seizing judgment creditor. (See Appendix C) That decision was specifically rejected by the Louisiana Supreme Court (See Appendix B) however the United States District Court decision is presently on appeal and has not yet been decided by the United States Fifth Circuit Court of Appeal. At about the same time, an Idaho decision entitled *In the Matter of J. E. Hall Contractors, Inc.*, Bankrupt, 1973 P.H. Fed. 35,798, 31 A.F.T.R. 2d 73-1033 (1973), was rendered contra to the decision reached in the Fourth Circuit Court of Appeal of Louisiana and the United States District Court in Louisiana (supra) but that decision was not particularly followed nor cited by the Louisiana Supreme Court while ruling contra to the Fourth Circuit Court of Appeal and the United States District Court in Louisiana although the Louisiana Supreme Court was fully aware of the Idaho decision.

For the foregoing reasons it is respectfully submitted that this important federal question needs to be definitively passed upon by this Honorable Court so as to eliminate the obvious uncertainty and the associated problems which have been brought on by the 1966 amendment.

* * * * *

Another equally compelling reason why this petition for a writ of certiorari should be granted is that the de-

cision by the Supreme Court of Louisiana in this matter and the ruling in the Idaho decision if left undisturbed could become controlling law, creating a condition of chaos in an area of law which begs for stability.

One can hardly read the *J. E. Hall Contractors, Inc.* case (supra) without immediately noting that the United States District Court conducted an extensive, and therefore undesirable, factual inquiry into the business activities of the corporation before finding that the United States Government had filed their lien in the wrong place. The net effect of the judgment was that the government failed to perfect its lien and lost its claim to a competing lien creditor.

The holding clearly would require the Federal Government and others to cope with the 1966 language through an intensive factual inquiry as to where the **physical** executive office is located including where the board of directors **physically** meet. This should hardly be an appropriate area of inquiry to determine if there has been compliance with the necessity of locating the "principal executive office" of a corporation or partnership.

Obviously the **physical** executive office of a corporation or partnership can be changed on a day by day basis and could, among other things, depend upon the current corporate or partnership "state of mind" or even worse, the **office may not physically exist at all.** Indeed a partnership has no board of directors to meet at any particular place and a partnership or corporation may not even have a specific, tangible place where it conducts business. Accordingly, adoption of the Idaho holding could only lead

to further gross uncertainty in the matter of filing tax liens.

This unhappy result would never occur under petitioner's theory of what the words ". . . principal executive office . . ." mean and petitioner respectfully suggests its theory falls much more in line with the thinking of the Senate Finance Committee who devised the language of the amendment.

Gill Trailer and Equipment Rentals, Inc. claims that Orleans Parish is the "principal executive office" of S. D'Antoni, Inc. because (a) Orleans Parish represents the stated corporate domicile of that corporation and (b) because in concocting the language "principal executive office" the Senate Finance Committee in S. Rep. No. 1708 89th Congress 2d. Sess., pp. 10-11 (1966- 2 Cum. Bull 876, 883-884) stated that the term was being used in the amended legislation because a corporation's and partnership's principal executive office is . . . "the most identifiable of all the offices that a business may maintain, appearing, as it does, on the annual reports filed with **most** states and on similar returns, and avoids the uncertainty of determining **which of the many business offices** that a taxpayer may maintain is its principal one" (emphasis supplied); and (c) because prior to the 1966 amendment the cases of *United States of America vs. Jane B Corporation*, 167 F. Supp. 352 (1958) and *Goldstein vs. Bankers Commercial Corporation*, 152 F. Supp. 856 affirmed in 257 F. 2d. 48 (1958) had been decided all of which pointed to the conclusion that Orleans Parish was the proper place to file the tax lien.

Petitioner readily acknowledges that "principal executive office" and "registered office" of a corporation are not co-extensive terms and do not necessarily mean the same thing—but sometimes they clearly do.

The Senate Finance Committee no doubt knew that this was so since all states perhaps do not require registering a corporate or partnership office. That is evident from their own report where the words, "most states" instead of "all states" was used when referring to annual reports, etc. Indeed a partnership need not file a registered office in Louisiana and, of course, the provisions of 26 USCA Sec. 6323 (f) (2) refers to partnerships as well as corporations. This perhaps explains why the limiting words "registered office" was not used in the 1966 amendment. Petitioner, however, strenuously advances the view that Congress clearly did not mean by "principal executive office" such things as the place where most of the business goes on; or the place where the largest building ownd by the corporation exists, or the place where the largest number of corporate personnel, or corporate officers may meet or work or live, ad infinitum.

The obvious purpose of the 1966 amendment was to provide persons charged with the duty of applying the lien law with a simple guideline for finding the proper geographic location of corporations and partnerships for purposes of filing a tax lien. The Senate Finance Committee clearly felt that somehow, somewhere all States require and receive a public documentary record which is **readily identifiable** and which would take the matter of locating a ". . . principal executive office . . ." out of public dispute thereby assisting the taxing authority, the tax debtor,

and third party claimants, such as petitioner, in avoiding ". . . the uncertainty of determining which of the many business offices that a tax debtor may maintain as its principal one." (S. Rep. No. 1708 89th Congress 2d. Sess., pp. 10-11 (1966 - 2 Cum. Bull 876, 883-884) The point petitioner wishes to emphasize is that both corporations and partnerships by force of governmental requirements within the framework of any State must in some way take a documentary stand as to where it is physically located. If they are not statutorily required to do so, as in Louisiana corporate law where corporations are required to report where their principal domicile is and also render annual reports, then by some other State requirement.

With reference to partnerships, Louisiana requires recordation of some but not all partnership agreements, (see Louisiana Civil Code Arts. 2834, 2836, 2845) but annual reports by all partnerships in some form or another are required including income tax and sales tax reports, applications for occupational licenses, and other permits. To the best of this writer's knowledge, these type reports are required country wide and also to the best knowledge of this writer, all such type reports require a statement of the partnership or corporate location as established by the entity itself. Petitioner respectfully submits, therefore, that the "principal executive office" is basically and primarily found through uncontestable documentary evidence provided by the corporation or partnership from which they cannot factually retreat in the wake of a properly filed United States tax lien but certainly not from a search into where exists the largest building owned by the corporation or partnership or other endless, confusing, evidentiary possibilities, which incidentally was the precise trap fallen into in the Idaho decision.

* * * * *

In the case at hand, we are dealing with the general category of a closely held, informally run corporation, and there are thousands throughout the United States. Board of directors' meetings are either never held, and resolutions never passed or at most such corporate meetings and resolutions represent the work of a lawyer or secretary who has concocted the meetings and resolutions to satisfy some outside business requirement. Where would the taxing authority look for the **non-existent physical** "principal executive office" of such a corporation or partnership if not among documents announcing to the State where that partnership or corporate executive office is as stated by the partnership or corporation in its formal communications with the State.

In view of the obvious instability and uncertainty evolving from the decision of the Louisiana Supreme Court and the hazards which following such a decision would impose upon those charged with the enforcement of the law if that decision represented the final authority on this subject, it is again respectfully suggested that this Honorable Court should grant this petition for writ of certiorari.

CONCLUSION

For these reasons a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of Louisiana.

Respectfully submitted,

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CERTIFICATE

I, James O. Manning, one of the attorneys for Gill Trailer & Equipment Rentals, Inc., appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 13th day of December, 1973, I served copies of the foregoing Petition for Writ of Certiorari to the Supreme Court of the United States on the several parties thereto, as follows:

1. On the United States, by mailing a copy thereof to the office of William S. Estabrook, Attorney, Tax Division, Department of Justice, Washington, D.C. 20530, airmail postage prepaid; Gerald J. Gallinghouse, United States Attorney, by mailing the same postage prepaid to his office at 500 St. Louis Street, New Orleans, Louisiana 70130; and to the Solicitor General, Department of Justice, Main Justice Building, Room 5143, 10th and Constitutional Avenue, Northwest, Washington, D.C. by mailing the same airmail, postage prepaid.

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834-2372.

APPENDIX A

GILL TRAILER & EQUIPMENT RENTALS, INC.	:	NO. 4382
	:	COURT OF APPEAL
VS.	:	FOURTH CIRCUIT
S. D'ANTONI, INC., AND/OR S. D'ANTONI MOTOR FREIGHT LINES	:	STATE OF LOUISIANA

APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF JEFFERSON, STATE OF LOUISIANA, NUMBER: 113-738, HONORABLE FRANK V. ZACCARIA, JUDGE.

: : : :

HARRY T. LEMMON
JUDGE

: : : :

(Court composed of Judges Harry T. Lemmon, James C. Gulotta and John C. Boutall)

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Attorney for Plaintiff-Appellant

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Attorney for Intervenor-Appellee

SEP 22 1972

The appeal in this case involves the ranking of two claims to the proceeds of a judicial sale of incorporeal movable property.

On July 29, 1968 Gill Trailer and Equipment Rentals, Inc. instituted this suit in Jefferson Parish against S. D'Antoni, Inc. and/or S. D'Antoni Motor Freight Lines, to recover certain sums allegedly due under various lease agreements. Judgment was obtained by default, and on September 28, 1968 the district court ordered that Permit No. 1026B, belonging to S. D'Antoni, Inc., be seized and sold to satisfy the judgment. After notice of seizure was served on the judgment debtor, the property was sold at public auction on November 20, 1968 for $10,600.00. Since the mortgage certificate listed several tax liens, judgments and chattel mortgages, Gill filed a rule citing the creditors listed on the mortgage

certificate to show cause why it should not be paid the proceeds of the judicial sale by preference over the other creditors.

The United States of America intervened and sought to enforce its tax liens against the subject property. The intervention alleged that notices of the liens were filed in Jefferson Parish on July 15 and 16, 1968, prior to the time that Gill's judgment was rendered and seizure thereunder was effected.

After a hearing on the rule, the district court held that D'Antoni was indebted to the United States in the principal amount of $79,455.26 and that the indebtedness constituted a lien on the property of the debtor. The court further ordered that the proceeds of the judicial sale be turned over to the United States in partial satisfaction of this lien. Gill appealed devolutively.

The Articles of Incorporation of S. D'Antoni, Inc. recite that "The location and post-office address of its registered office is 6304 Beauregard Street, New Orleans, Louisiana." Gill therefore contends that the government lien had to be recorded in Orleans Parish in order to be effective and that the recordation in Jefferson Parish was of no consequence.

26 U.S.C. 6321 provides for a lien in favor of the United States upon all property belonging to a person liable for unpaid taxes. 26 U.S.C. 6323 further provides in pertinent part:

> "(a)* * *The lien imposed by section 6321 shall not be valid as against any * * *judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.
>
> * * *

"(f)(1) Place for filing.- The notice referred to in subsection (a) shall be filed-

"(A) Under State laws.-

* * *

"(ii) Personal property. In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated;

* * *

"(2) Situs of property subject to lien.- For purposes of paragraph (1), property shall be deemed to be situated-

* * *

"(B) Personal property.- In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

"For purposes of paragraph (2) (B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located,* * *" (Emphasis supplied)

La. R.S. 52:51, which is also pertinent, reads:

"Notices of liens for taxes payable to the United States and certificates discharging such liens shall be filed for record in the office of the parish recorder of mortgages of the parish in this state within which the property subject to such lien is situated." (Emphasis supplied)

The place for filing the required notice is thus the mortgage office of the parish in which the personal property subject to the lien is situated. Under 26 U.S.C. 6323 (f) (2) (B), personal property is deemed to be situated at the residence of the

taxpayer at the time the notice is filed, and the residence of a corporation is deemed to be the parish in which the principal executive office is located.

Thus, the critical determination in this case is the location of the "principal executive office" of S. D'Antoni, Inc.

In interpreting this type of statute, courts necessarily must inquire into the purpose of the statute and the objective that the statute is designed to accomplish. We are assisted in the present case by [S. Rep. No. 1708, 89th Cong., 2d. Sess., pp 10-11 (1966 - 2 Cum. Bull. 876, 883-884), which was published in connection with the 1966 amendment to 26 U.S.C. 6323. The Senate Finance Committee specifically stated that the amendment is "designed to clarify existing law and to increase the likelihood that creditors, generally, will receive notice as to a taxpayers' standing with the government." The Committee adopted the residence, rather than the domicile, of the taxpayer as the place for filing, stating:

> "The amendment requires notice of a tax lien to be filed where a taxpayer resides, and not at his domicile, as presently contended by the Internal Revenue Service, because of the difficulty in determining a person's domicile, based as it is on (among other things) his state of mind. On the other hand, for purposes of determining the residence of corporations and partnerships, the amendment provides specific rules for determining their residence. Under the amendment, the residence of a corporation or a partnership is deemed to be the place at which its principal executive office is located. This is the most readily identifiable of all the offices that a business may maintain, appearing, as it does, on the annual reports filed with most States and on similar returns, and avoids the uncertainty of determining which of the many business offices that a taxpayer may maintain is its principal one." (Emphasis supplied)

Congress therefore intended to require that a lien notice against a corporation be filed at a place which can be readily identified and ascertained, even if the corporation has many business offices, in order that a person doing business with the corporation will be informed of the lien. Congress did not intend to designate as the place for filing the largest office, or the office with most executives or employees or equipment, or where most business transactions occur, or any other office which would require extensive factual investigation to identify. Congress intended to designate the singular office listed by a corporation in its returns filed with the state as a matter of public record, regardless of the name by which the office is called in the state statutes which require filing of these returns.[1]

We conclude that when Congress used the term "principal executive office" to designate the residence of a corporation for purposes of 26 U.S.C. 6323, they intended to refer to the statutory residence which varying state statutes assign to corporations. In Louisiana the statutory residence of a corporation is its registered office.[2]

1. This approach also seems to favor the government in future cases, since an easily ascertainable place for filing notice is necessary for a valid lien. Furthermore, no factual proof regarding business activities is necessary in order for the government to establish the validity of the lien.
We note that the 1966 amendment followed the cases of United States v. Jane B. Corporation, 167 F. Supp. 352 (1958) and United States v. Webster Record Corporation, 208 F. Supp. 412 (1962), which adopted the rationale of our decision in the present case.

2. In Louisiana corporations are required to set forth in the Initial Report the location and post office address of the corporation's registered office, R.S. 12:101, and in Annual Reports the post office address of its registered office, R.S. 12:102. The registered office is considered the domicile of the corporation for all purposes. R.S. 12:104.

Since no notice of lien was filed by the United States in the parish in which the corporation's principal executive office was located, the lien is not valid against judgment lien creditors.

However, the government contends that the 1966 amendment also changed the wording of 26 U.S.C. 6323 (a) from "judgment creditor" to "judgment lien creditor." Since Gill did not record its judgment as required by C.C. art. 3322 in order for the judicial mortgage to take effect, the government argues that Gill is not a judgment lien creditor within the meaning of the statute.

C.C. art. 3322 is inapplicable to movable property. C.C. art. 3289. A judgment creditor does not obtain a privilege against movable property by recording the judgment but by seizing the property under the judgment. C.C.P. art. 2292. We conclude that Gill is a judgment lien creditor.

Accordingly, the judgment of the trial court is reversed, and judgment is rendered in favor of Gill Trailer and Equipment Rentals, Inc., ordering that it be paid by preference the proceeds of the judicial sale of Permit No. 1026B of S. D'Antoni, Inc. up to the full amount of its judgment. Costs of this appeal are to be paid from the proceeds of the judicial sale.

REVERSED AND RENDERED

SUPREME COURT OF LOUISIANA

NO. 52,965 MONDAY AUG 20 1973

GILL TRAILER & EQUIPMENT RENTALS, INC.

VS.

S. D'ANTONI, INC. AND/OR S. D'ANTONI MOTOR FREIGHT LINES

ON WRIT OF REVIEW TO THE COURT OF APPEAL, FOURTH CIRCUIT, PARISH OF JEFFERSON, STATE OF LOUISIANA

MARCUS, Justice

This suit involves the ranking of two claims to the proceeds of a judicial sale. The contest is between a federal tax lien filed by the United States of America and a lien of a seizing creditor, Gill Trailer & Equipment Rentals, Inc., under a writ of fieri facias.

On July 29, 1968, Gill Trailer & Equipment Rentals, Inc. filed suit in the 24th Judicial District Court for the Parish of Jefferson against S. D'Antoni, Inc. Recovery was sought based upon defendant corporation's failure to pay under certain lease agreements. Judgment was rendered by default on August 28, 1968 in the sum of $4,823.72, together with interest, attorney fees and costs. Pursuant to the issuance of a writ of fieri facias, Permit No. 1026 B belonging to S. D'Antoni, Inc. was seized on October 14, 1968 and sold at public auction on November 20, 1968. Thereafter, Gill caused a rule to issue, citing the eleven parties listed on the mortgage certificate to show cause why Gill should not be paid in preference out of the proceeds of the judicial sale of the said permit.

The United States intervened. It claims priority in payment by virtue of the filing of notice of its tax liens in the Parish of Jefferson, pursuant to the designation in 26 USC Sec. 6323(f)(2) of the "principal executive

office" of the corporation as the proper location for such filing. The United States alleges that notice of federal tax liens in the amount of $79,455.26, plus statutory interest, was filed on July 15, 1968 and July 16, 1968.[1] It contends that notice of these tax liens was filed prior to the time Gill secured judgment and effected its seizure. Accordingly, it claims that it should be paid in preference to Gill out of the proceeds of the sale.

Gill objects to the payment of United States in preference to its claim on the ground that the Government filed its notice of tax liens in the wrong parish. Gill contends that the tax liens, instead of having been filed in Jefferson Parish, should have been filed in the parish where the registered office of the tax debtor, S. D'Antoni, Inc., was located, which, in this case, was Orleans Parish. This contention is based upon Gill's interpretation of the place of filing in 26 U.S.C. Sec. 6323(f)(2). Thus, for this reason, Gill claims that the notice filed by the Government in Jefferson Parish is without effect and cannot be enforced.

United States urges that, under the provisions of 26 U.S.C. Sec. 6323, notice of tax lien must be filed in the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed. Sec. 6323(f)(2) further provides that the residence of a corporation shall be deemed to be the place at which the "principal executive office" of the business is located. This, the United States contends is Jefferson Parish, as so alleged by Gill itself in its petition in these proceedings.

---

1. Mortgage Certificate, Jefferson Parish shows: federal tax lien in the amount of $50,394.14 dated 7/11/68 recd. MOB 515-27; federal tax lien in the amount of $41,483.55 dated 7/16/68 recd. MOB 515-200; federal tax lien in the amount of $1,513.95 dated 8/19/68 recd. MOB 517-145; federal tax lien in the amount of $1,563.00 dated 9/17/68 recd. MOB 518-984.

The District Court, after hearing on the rule to show cause, ordered the proceeds of the judicial sale turned over to the United States in partial payment of its lien.[2]

Gill appealed and the Court of Appeal reversed.[3] The Court stated:

> "We conclude that when Congress used the term 'principal executive office' to designate the residence of a corporation for purposes of 26 USC Sec. 6323, they intended to refer to the statutory residence which varying state statutes assign to corporations. In Louisiana the statutory residence of a corporation is its registered office."

At the instance of the United States Government, we granted a writ of certiorari or review.

We find the Court of Appeal erred in its interpretation of the statute in question.

According to 26 U.S.C. Sec. 6323(f), notice shall be filed in the case of personal property, whether tangible or intangible, "in one office within the State (or the county or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated." Personal property, in this statute, is deemed to be situated at the residence of the taxpayer at the time the notice of lien is filed [(1) and (2)(B)]. The statute recites:

> "For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, * * *"

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2. The amount due under the liens was $79,455.26, and the permit was sold at judicial auction for $10,600.00.

3. Gill Trailer & Equipment Rentals, Inc. v. S. D'Antoni, Inc. and/or S. D'Antoni Motor Freight Lines, 267 So. 2d 242 (La. App. 1972).

The above is the wording of the statute as amended in 1966, Pub. L. 89-719, Title I, Sec. 101 (a), 80 Stat. 1125.

We conclude that the phrase "at which the principal executive office of the business is located" is clear and unambiguous. Under no concept could it be interpreted to mean "registered office," as contended by Gill and as held by the Court of Appeal.

As we view the matter, it would have been simple for Congress, in the 1966 amendment, to have used the phrase "registered office" in defining the residence of a corporation if it so intended. We feel that to equate "principal executive office" with "registered office" would contradict the clear meaning of the words of the statute. When a law is clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. Article 13 of the Civil Code; Article 5052 of the Code of Civil Procedure.

A further argument in favor of the Government's position is that the statute designates the residence of both a corporation and a partnership as the place at which the principal executive office of the business is located. Accordingly, Congress has applied this phrase to both a corporation and a partnership. It is obvious that an interpretation of the phrase "principal executive office" to mean registered office, as has been suggested, would make it inapplicable to a partnership. This is further evidence that such an interpretation would not only be contrary to the clear language of the statute, but would also lead to an inconsistent result.

We have reviewed S. Rep. No. 1708, 89th Cong., 2d Sess., pp. 10-11 (1966-2 Cum. Bull, 876, 883-884), U.S. Code Cong. & Admin. News 1966, p. 3722, which was published in connection with the 1966 amendment to 26 U.S.C. Sec. 6323 and find nothing therein indicating anything contrary to our present interpretation.

For the foregoing reasons, we hold that for purposes of 26 U.S.C. Sec. 6323(f)(2)(B), the residence of a corporation shall be deemed to be the place at which the principal executive office of the business is located in fact.

As we have heretofore stated, the United States Government filed its notice of tax liens against S. D'Antoni, Inc. in the Parish of Jefferson, the principal executive office of the tax debtor, S. D'Antoni, Inc. In argument before this Court, the question arose as to whether the record was sufficient to support the finding that the principal executive office of S. D'Antoni, Inc. was in fact located in Jefferson Parish. In this regard, we wish to point out that the general rule of venue provides that an action against a domestic corporation shall be brought in the parish where its registered office is located (Article 42(2) of the Code of Civil Procedure), which, in this case, would have been Orleans Parish. However, an exception to this general rule is provided in Article 77 of the Code of Civil Procedure which allows an action also to be brought in the parish where a business office or establishment of the corporation is located. This is exactly what Gill did in the instant case in its suit against S. D'Antoni, Inc. Furthermore, in its petition, Gill alleges that S. D'Antoni, Inc. "is a domestic corporation with its registered office in Orleans Parish but with its main business office in Jefferson Parish, at which place all of the business, contracts and other activities hereinafter described occurred." This certainly represents an admission by Gill that the principal executive office of S. D'Antoni, Inc. is located, in fact, in Jefferson Parish. Accordingly, we find it sufficient for us to so hold.

It has been called to our attention that the United States District Court, Eastern District of Louisiana, Section B, in a proceeding arising

out of a dispute between the United States Government and Fruehauf Corporation relative to the ranking of claims to proceeds in another matter but involving the same tax debtor, S. D'Antoni, Inc., concluded that it was in accord with the decision of the Fourth Circuit Court of Appeal in the present case. See S. D'Antoni, Inc. v. The Great Atlantic and Pacific Tea Company, Inc., Civil Action No. 68-1916, January 23, 1973. That matter is presently on appeal to the Fifth Circuit Court of Appeal. We do not consider that we are bound by any expression of that court in a consideration of the matter herein.

Accordingly, under 26 U.S.C. Sec. 6323, the notice of the federal tax lien was properly filed in Jefferson Parish, and the United States Government is entitled to be paid in preference out of the proceeds of the judicial sale.

For the reasons assigned, the judgment of the Court of Appeal, Fourth Circuit, is reversed and that of the District Court reinstated. All costs to be paid by defendant, Gill Trailer & Equipment Rentals, Inc.

REHEARING REFUSED
SEP 24 1973

Minute Entry
January 23, 1973
Heebe, J.

JAN 23 3 38 PM '73

S. D'ANTONI, INC.

versus

THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, INC.

CIVIL ACTION

NO. 68-1916

SECTION B

The above-entitled action was terminated by a settlement whereby defendant agreed to pay plaintiff the sum of $35,000.00. The settlement funds were subsequently deposited by defendant into the registry of the Court.

Various judgment creditors of plaintiff, including Fruehauf Trailer Division, Fruehauf Corporation, have seized plaintiff's interest in this litigation, as has the United States of America for delinquent taxes owed it by plaintiff, S. D'Antoni, Inc. The relative rank of these claims, as between Fruehauf and the government, is presently before this Court on the motion of Fruehauf. The Court has been informed by counsel for Fruehauf that there is an agreement between Fruehauf and other lien creditors for a pro ration of the fund if Fruehauf is successful.

The government recorded notice of its federal tax lien in the mortgage records of Jefferson Parish, Louisiana, on July 15 and 16 and August 20, 1968, and bases its claim to priority on this notice. Fruehauf became a judgment creditor of plaintiff on August 23 and September 13, 1968. Fruehauf caused writs of Fieri Facias to be issued to the Sheriff of Orleans Parish under the judgments and thereby seized the interest of plaintiff in this litigation on October 30, 1968. It bases its claim to priority on this act.

Both parties are agreed that the Internal Revenue Code, 26 U.S.C.A. § 6321, gives the government preferential right to the assets of its debtor taxpayer as against any judgment lien

PROCESS
X CHARGE

creditor from the date of the filing of notice which meets the requirements of § 6321(f). In addition, the government has not questioned the status of Fruehauf as a judgment lien creditor. The sole issue which has been raised, briefed and argued is whether the government's recording of notice of the tax lien in the mortgage records of Jefferson Parish does in fact meet the requirements of § 6321(f).

There appears to be little, if any, reason for this Court to go into a detailed analysis of the issue involved here as the same issue, involving in fact the same debtor - S. D'Antoni, Inc. - has been decided by the Fourth Circuit Court of Appeal of Louisiana in Gill Trailer & Equipment Rent., Inc. v. S. D'Antoni, Inc., 267 So.2d 242 (La.App. 1972). While we are not, of course, bound by this decision, this Court is in complete accord with the Louisiana court's interpretation of 26 U.S.C.A. § 6321, with special emphasis on the quotation from the Senate Finance Committee at pages 245-246 and the cases cited in footnote 1 at page 246. The evidence presented at the hearing on this matter indicated that S. D'Antoni, Inc.'s registered office is in Orleans Parish, which the Louisiana court also found to be a fact. Therefore, we hold, as did the court in Gill Trailer & Equipment Rent., Inc. v. S. D'Antoni, Inc., supra, that "[s]ince no notice of lien was filed by the United States in the parish in which the corporation's principal executive office was located, the lien is not valid against judgment lien creditors. Accordingly,

IT IS THE ORDER OF THE COURT that the motion of Fruehauf Trailer Division, Fruehauf Corporation, for an order fixing the relative rank of claims to funds on deposit in the registry of the Court be, and the same is hereby, GRANTED in favor of Fruehauf, giving to Fruehauf preferential ranking over the United States of America.

IT IS THE FURTHER ORDER OF THE COURT that counsel for Fruehauf Trailer Division, Fruehauf Corporation, PREPARE a proposed decree providing for distribution of the funds on deposit in the registry of the Court.

Frederick M. Hecker

John R. Schupp, Esq.

Charles L. Chassaignac, Esq.

TWENTY FOURTH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO: 113-738 DIVISION

GILL TRAILER AND EQUIPMENT RENTALS, INC.

VS.

S. D'ANTONI, INC., and/or
S. D'ANTONI MOTOR FREIGHT LINES

FILED FOR RECORD
JUN 24 12 39 PM '70
DY. CLERK OF COURT
PARISH OF JEFFERSON, LA.

Filed _____, 1970 _____
Deputy Clerk

JUDGMENT

This case came on March 5, 1969 to be heard

Present: Harry A. Burglass
Attorney for plaintiff

_____
Attorney for defendant

Charles H. White
Attorney for intervenor

The Court, having considered the pleadings, and heard evidence and argument of counsel, and considering the law and the evidence to be in favor of intervenor, the United States of America, for the reasons orally assigned:

IT IS ORDERED that S. D'Antoni, Inc., is indebted to the United States for unpaid 1968 Federal Withholding Tax liabilities in the amount of $79,495.26, plus statutory interest.

IT IS ORDERED that the indebtedness of the taxpayer is secured by a Federal tax lien in favor of the United States, and that such lien attaches to the fund which is the subject of this action.

IT IS ORDERED that the Federal tax lien, hereinabove set forth, be foreclosed upon the fund which is the subject of this action and to the extent necessary that such fund be turned over to the United States in partial satisfaction of its lien.

Judgment read, rendered, and signed in open Court this 24th day of June, 1970, at Gretna, Louisiana.

/S/ FRANK V. ZACCARIA

JUDGE

A TRUE COPY OF THE ORIGINAL
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DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA.

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Supreme Court, U. S.
FILED
FEB 8 1974

No. 73-948

In the Supreme Court of the United States

OCTOBER TERM, 1973

GILL TRAILER & EQUIPMENT RENTALS, INC., PETITIONER

v.

S. D'ANTONI, INC. AND/OR S. D'ANTONI MOTOR FREIGHT LINES AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-948

GILL TRAILER & EQUIPMENT RENTALS, INC., PETITIONER

v.

S. D'ANTONI, INC. AND/OR S. D'ANTONI MOTOR FREIGHT LINES AND UNITED STATES OF AMERICA [1]

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The sole question raised by the petition is whether the phrase "principal executive office" in Section 6323 (f)(2)(B) of the Internal Revenue Code of 1954, where a notice of a federal tax lien with respect to personal property of a corporation must be filed, means the place where the management of business is principally conducted, as the court below held, or the registered office of the corporation, as petitioner contends.

[1] Although the caption of the case does not include the United States as a party, the government intervened in the proceeding below and is deemed to be a party here under Rule 21(4) of this Court's rules.

532-060—74——1

1. Section 6323 of the Code, as amended by the Federal Tax Lien Act of 1966, provides that in order for a federal tax lien to be valid, a notice of lien must be filed as provided in Section 6323(f). Section 6323(f)(1)(A)(ii) provides that, with respect to tangible and intangible personal property of a tax debtor, such notice shall be filed in an office within the state (or county, or other governmental subdivision), as designated by the state, "in which the property subject to the lien is situated." Section 6323(f)(2)(B) specifies that personal property is deemed to be situated "at the residence of the taxpayer at the time the notice of lien is filed" and provides that, with respect to a corporation or a partnership, "residence" is deemed to be "the place at which the principal executive office of the business is located."[2]

This case involves the priority of a federal tax lien over a judgment creditor to the proceeds of a judicial sale. Petitioner obtained a judgment against S. D'Antoni, Inc., in the amount of $4,823.72. The United States intervened and claimed priority by virtue of the prior filing of a notice of its tax liens against S. D'Antoni, Inc. These notices were filed in the Jefferson Parish where S. D'Antoni, Inc., maintained its principal business office (Pet. App. B 21–22).

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[2] Prior to 1966, the statute provided that the notice of lien was to be filed "in the office designated by the law of the State where the property subject to the lien is situated." This resulted in considerable confusion as to exactly where personal property was "situated". See S. Rep. No. 1708, 89th Cong. 2d Sess., pp. 10–11. Section 6323 was therefore amended in 1966 to provide specific rules regarding the proper place for filing notices of federal tax liens. (*Ibid.*)

Petitioner contends (Pet. 8) that the government's notice of lien was invalid because it was filed in the wrong place. It urges that under Section 6323(f)(2)(B), the notice of lien should have been filed in Orleans Parish, where the registered office of S. D'Antoni, Inc., was located. Although the Louisiana Court of Appeals, Fourth Circuit, had upheld petitioner's contention that the statutory phrase "principal executive office" meant registered office (Pet. App. A 14–20), the Supreme Court of Louisiana reversed (Pet. App. B 21–26).

It held that the terms of Section 6323(f)(2)(B) were clear and unambiguous in requiring the government to file notices of tax liens, with respect to corporate personal property, at "the place at which the principal executive office of the business is located in fact" (Pet. App. B 24–25). The court noted that petitioner had conceded that the "principal executive office" of S. D'Antoni, Inc., was located in Jefferson Parish, where the government's notice of lien was filed, because petitioner had stated in its pleadings that its "main business office * * *, at which place all of the business, contracts and other activities * * * [between petitioner and S. D'Antoni] occurred" was located in Jefferson Parish (Pet. App. B 25).

2. The decision of the Supreme Court of Louisiana is correct. The term "principal executive office" in Section 6323(f)(2)(B) connotes the place where the management of the enterprise is conducted and not its registered office, which is simply an address selected by the officials of a corporation. As the court observed, Congress could have easily used the phrase

"registered office" in defining the residence of a corporation for purposes of filing of a federal tax lien, but it did not do so (Pet. App. B 24). Nothing in the legislative history of the provision, quoted in full by petitioner (Pet. 5), suggests that the term "principal executive office" was to be equated with "registered office." Indeed, the statute's reference to partnerships, which in most states are not required to have a registered office, further supports the decision below that the term "principal executive office" is to be given its usual meaning, *i.e.*, the place where the management of the business is conducted.[3]

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1974.

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[3] See also *In re J. E. Hall Contractors, Inc.*, 31 A.F.T.R. 2d 1033 (D. Idaho) (decided February 20, 1973), where the district court similarly held that the statute required the government to file notices of its lien, with respect to a corporation's personal property, at the location of such corporation's "principal executive office." To the contrary is *S. D'Antoni, Inc.* v. *Great Atlantic and Pacific Tea Co.*, (D. La.) (decided January 24, 1973), on appeal to C.A. 5 (No. 73-2357), which relied upon the decision of the Louisiana Court of Appeals in this case. The opinion of the district court is set forth at Pet. App. C 27-29.

U.S. GOVERNMENT PRINTING OFFICE: 1974